IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

THURSDAY, THE 5TH JULY 2007 / 14TH ASHADHA 1929

WP(C).No. 830 of 2006(W)

(IA NO. 3060/2005 IN OS NO. 136/83 OF MUNSIFF COURT, PALAKKAD)

PETITIONERS:

1. **JABBAR, S/O. NOOR MUHAMMED RAWTHER, KARUKOODIPALAYAM, VADAKKANTHARA AMSOM, PALAKKAD TALUK.**
2. **OMANA, DO. DO.**

BY ADV. SRI.SAJAN VARGHEESE K.
SRI. LAIJU M.P.
SRI. BIPIN M.V.

RESPONDENTS:

1. **PACHANAYAKI, W/O.SUBRAMANIAN, KARUKODIPALAYAM, VADAKKANTHARA AMSOM, PALAKKAD TALUK.**
2. **RAJASEKHARAN, S/O.SUBRAMANIAN, DO. DO.**
3. **UDAYASHANKAR, S/O.SUBRAMANIAN, DO. DO.**
4. **SUSHEELA, D/O.SUBRAMANIAN, DO. DO.**
5. **KALA, D/O.SUBRAMANIAN, DO. DO.**
6. **CHELLAMMAL @ JAYALAKSHMI, DO. DO.**
7. **RATNAM, DO. DO.**
8. **MAHALINGAM, DO. DO.**
9. **VIJAYAN, DO. DO.**

10. MANOMANI, DO. DO.

11. POOJAMMA, DO. DO.

**12. KRISHNAN @ CHANDRAMANI,
DO. DO.**

13. KUMARAN, DO. DO.

14. MANI, DO. DO.

15. CHANDRAN, DO. DO.

16. KANAKAM, DO. DO.

BY

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 05/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C) NO: 830/2006

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1. COPY OF THE ORIGINAL PLAINT IN OS NO. 136/83 ON THE FILE OF THE MUNSIFF COURT, PALAKKAD.

EXT.P2. COPY OF THE JUDGMENT DT. 8/9/04 IN AS NO. 278/2001 ON THE FILE OF THE IST ADDL. DIST. COURT, PALAKKAD

EXT.P3. COPY OF THE REPORT SUBMITTED BY THE COMMISSIONER DT. 15/6/2005 IN OS NO. 136/83 ON THE FILE OF THE MUNSIFF COURT, PALAKKAD.

EXT.P4. COPY OF THE IA NO. 3060/2005 IN OS NO. 136/83 ON THE FILE OF MUNSIFF COURT, PALAKKAD.

EXT.P5. COPY OF THE OBJECTION TO EXT.P4 FILED BY THE PETITIONER NO. 1.

EXT.P6. COPY OF THE ORDER DT. 18/11/2005 PASSED IN EXT. P4.

True copy

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PIUS C. KURIAKOSE,J.

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W.P.(C) No.830 of 2006

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Dated: 5th July, 2007

JUDGMENT

This Writ Petition remains defective on the reason that respondents 5 to 12 have not been served notice. But I notice that respondents 5 to 12 were sailing along with respondents 1 to 4 and all of them are legal representatives of Sri.Subramanian, the deceased first plaintiff. The estate of Subramanian is adequately represented including the interest of respondents 5 to 12 by respondents 1 to 4 who have been served with notice.

2. The order impugned in this Writ Petition is Ext.P6 by which the trial court has allowed an application for amendment of the plaint so that the plaint schedule description will be in consonance with the report and plan submitted by the Advocate Commissioner. The ground on which the application was resisted by the petitioners was that if the application was allowed the plaint schedule property will change. As rightly noticed by the learned Trial Judge the Commission report on the basis of which the petitioners filed the application was obtained on the basis of the specific directions given in that regard by the lower appellate court. The judgment of the lower appellate court having been accepted by the parties, it is not open to them to

contend that the Commissioner's report cannot be relied on. The other contention is that the effect of the amendment will be to change the plaint schedule property. It is trite law that all amendments which are necessary for resolving the real controversy between the parties ought to be allowed provided the same does not cause any injustice to the opposite party. I am in agreement with the learned Munsiff that Ext.P6 order will not cause any legal prejudice to the petitioners. The maximum that could be said is that the petitioners will be put to certain inconvenience. But having regard to the finality attained by the judgment of the lower appellate court, I am inclined to compensate the petitioners even for the inconvenience which will be caused by Ext.P6. The challenge against Ext.P6 will fail and the Writ Petition will stand dismissed.

srd **PIUS C.KURIAKOSE, JUDGE**